

IN THE MATTER OF THE CLAIM OF

EDITH FRIEDMAN SMITH

Claim No. CU-3679

Decision No. CU 2069

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Martin S. Thaler, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by EDITH FRIEDMAN SMITH, and is based on the asserted loss of her interest in bonds issued by the Cuba Railroad Company. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or

by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of four bonds in the original face amount of \$1,000.00 each, issued by the Cuba Railroad Company and known as First Mortgage Gold Bonds, 4%, due June 30, 1970 issued under a Supplemental Indenture of July 1, 1952, with Guaranty Trust Company of New York as Trustee (formerly First Mortgage, 50 Year Gold Bond issued September 18, 1902, 5%, due July 1, 1952, with the Morton Trust Company of New York as Trustee). The bonds in question are Nos. TRM 3756 through TRM 3759.

Pursuant to the Supplemental Indenture of July 1, 1952, the bonds are over stamped to set forth an outstanding principal balance of \$460.00, and to provide total annual interest of 4% of the outstanding principal balance.

The record discloses that Cuba Railroad Company was owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba). It was listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Consolidated Railroads of Cuba was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Moreover, although Cuba Railroad was organized in New Jersey, it is wholly owned by Consolidated Railroads and does not qualify as a national of the United States under Section 502(1)(B) (*supra*). (See Claim of Kramer, Marx, Greenlee, and Backus, Claim No. CU-0105; 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Therefore, claimant is entitled to file this claim based upon the bonds in question which represent debts of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Joseph Gans, Claim No. CU-1720.)

With regard to the value of the bonds on the date of loss, information available to the Commission discloses that no part of the outstanding principal balance was ever paid, and that the last payment of interest was made on January 1, 1959.

The Commission, therefore, finds that the amount of the unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$1,971.44 including the principal amount of \$1,840.00, and the interest due on the bonds in the amount of \$131.44.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that EDITH FRIEDMAN SMITH suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Nine Hundred Seventy-One Dollars and Forty-Four Cents (\$1,971.44) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

4 JUL 1966

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)